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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,636	05/05/2006	Werner Lorch	D4700-00419	7412
8933 7590 04/01/2011 DUANE MORRIS LLP - Philadelphia IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196				
EXAMINER DUNWOODY, AARON M				
ART UNIT 3679		PAPER NUMBER		
MAIL DATE 04/01/2011		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/566,636

## Applicant(s)

LORCH, WERNER

## Examiner

AARON DUNWOODY

## Art Unit

3679

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 5-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Amended claim 1 functionally recites "a shower hose led through the feed-through element, wherein the shower hose can be pulled longitudinally out from the feed-through element to a position at which the hose can be retained by a retaining mechanism." However, claims 2, 3 and 8-20 appear to further define features of the functional retaining mechanism. It is not clear to the Examiner whether or not the retaining mechanism is being positively claimed. The Examiner will assume that the retaining mechanism is part of the claimed invention, and Applicant should amend claims accordingly.

The term "longitudinally" in claim 1 is a relative term which renders the claim indefinite. The term "longitudinally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 1 recites "the retaining mechanism is disposed at the feed-through element", and claim 2 recites "the retaining mechanism is disposed in the feed-through element." Correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

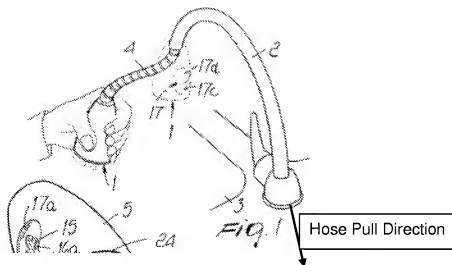
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 6370713, Bosio.

In regards to claim 1, in Figure 1 below, Bosio discloses a holding device for a shower hose, comprising:

a feed-through element (2), a shower hose led (4) through the feed-through element, wherein the shower hose can be pulled longitudinally out from the feed-through element to a position at which the hose can be retained by a retaining mechanism (1), and from which the hose can be retracted back through the feed-through element,

wherein the retaining mechanism is disposed at the feed-through element for securing the shower hose against movement in one direction, has a detachable coupling (6a) for coupling and decoupling the shower hose with the retaining mechanism, wherein the retaining mechanism allows the shower hose to be pulled out, and when coupled prevents the shower hose from being pulled back, and when decoupled allows the shower hose to be pulled back, wherein the detachable coupling is actuated for said coupling and decoupling, manually by manipulation of the shower hose.



In regards to claim 2, Bosio discloses the retaining mechanism is disposed in the feed-through element.

In regards to claim 3, Bosio discloses the coupling can be actuated manually by action of the retaining mechanism upon the feed-through element.

In regards to claim 5, Bosio discloses the coupling can be released by pulling on the shower hose and engaged by renewed pulling.

In regards to claim 6, Bosio discloses the shower hose is secured at least partially by force closure.

In regards to claim 7, Bosio discloses the shower hose is at least one of ribbed and coiled, and securement is realized at least partially by form closure.

In regards to claim 8, Bosio discloses the retaining mechanism is configured such that the retaining mechanism secures the shower hose only in a certain rotary position and in another rotary position lets the shower hose through.

In regards to claim 9, Bosio discloses the retaining mechanism has a sleeve, which, at one position at least, has an inwardly projecting oblique surface.

In regards to claim 10, Bosio discloses in the rest of a circumferential region apart from the inwardly projecting oblique surface, the sleeve has a configuration in which the internal diameter is not reduced.

In regards to claim 11, Bosio discloses the sleeve comprises an outer sleeve and the retaining mechanism has a clamping sleeve, which is guided in the outer sleeve so as to be movable to a limited degree and, at one circumferential position at least, has an outwardly protruding projection.

In regards to claim 12, Bosio discloses a circumferential extent of the projection is smaller than a circumferential extent of a portion of the outer sleeve that is free from the oblique surface.

In regards to claim 13, Bosio discloses the projection is configured so as to be flexible in a radial direction.

In regards to claim 14, Bosio discloses the projection, upon radial movement inward, enters into at least one of force and form closure with the shower hose led through the clamping sleeve.

In regards to claim 15, Bosio discloses the projection is configured on a molded-on tongue of the clamping sleeve.

In regards to claim 16, Bosio discloses the projection is configured on a separate component.

In regards to claim 17, Bosio discloses the clamping sleeve is configured such that, when the shower hose is moved, the clamping sleeve is carried along with the shower hose in a longitudinal direction.

In regards to claim 18, Bosio discloses a connecting link guide between the outer sleeve and the clamping sleeve, which aligns at least one said projection of the clamping sleeve alternately with at least one said oblique surface and an interspace with the at least one said oblique surface.

In regards to claim 19, Bosio discloses the connecting link guide has a connecting link on the outer sleeve and at least one pin on the clamping sleeve.

In regards to claim 20, Bosio discloses the connecting link guide allows a full rotation of the clamping sleeve.

### ***Response to Arguments***

Applicant's arguments filed 1/4/2011 have been fully considered but they are not persuasive.

Applicant argues that Bosio does not disclose or suggest any sort of retaining mechanism for securing the shower hose at a pulled-out position. The Examiner disagrees. In Figure 1 above, Bosio clearly illustrates a retaining mechanism.

Further, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA

1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. In re Ludtke, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d at 664, 169 USPQ at 566 (CCPA 1971); In re Shreiber, \_\_\_ F.2d at \_\_\_, 44 USPQ2d 1429 (Fed. Cir. 1997).

Applicant argues that Bosio does not disclose or suggest any detachable coupling associated with the faucet or other feed-through element, that operates between the hose and the feed-through element, so as to couple with and thus arrest the hose at the pulled out position, and also to decouple with the hose and thus permit the hose to retract. The Examiner disagrees. Bosio clearly illustrates a detachable coupling 6a.

Further, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d



1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. In re Ludtke, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d at 664, 169 USPQ at 566 (CCPA 1971); In re Shreiber, \_\_\_ F.2d at \_\_\_, 44 USPQ2d 1429 (Fed. Cir. 1997).

Applicant argues that Bosio does not disclose the shower hose can be pulled longitudinally out from the feed-through element to a position at which the hose can be retained by a retaining mechanism, and from which the hose can be retracted back through the feed-through element. The Examiner disagrees. Figure 1 clearly illustrates the shower hose can be pulled longitudinally out from the feed-through element to a position at which the hose can be retained by a retaining mechanism, and from which the hose can be retracted back through the feed-through element.

Further, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose

any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. In re Ludtke, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d at 664, 169 USPQ at 566 (CCPA 1971); In re Shreiber, \_\_\_ F.2d at \_\_\_, 44 USPQ2d 1429 (Fed. Cir. 1997).

Applicant argues that Bosio's retaining mechanism is not disclosed as being disposed on or in the feed-through element. The Examiner disagrees. In Figure 1, Bosio's retaining mechanism is disclosed as being disposed on or in the feed-through element.

Applicant argues that Bosio's shower hose is not secured by force closure. The Examiner disagrees. While anticipation requires the disclosure of each and every limitation of the claim at issue in a single prior art reference, it does not require such

disclosure *in haec verba*. In re Bode, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977). In addition, it does not require that the prior art reference "teach" what the application at issue teaches. Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). Finally, Applicant is reminded that during examination claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). The coupling mating threads contain the force closure.

Applicant argues that Bosio's shower head does not have a sleeve, oblique surface, clamping and guiding action, protruding projection, rotatable connecting link guide, etc. The Examiner disagrees. In Figures 3-6, Bosio illustrates the shower head does having a sleeve, oblique surface, clamping and guiding action, protruding projection, rotatable connecting link guide, etc.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON DUNWOODY whose telephone number is (571)272-7080. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AARON DUNWOODY/  
Primary Examiner, Art Unit 3679

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